IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Interim Relief Application No. 6896 for 2004
In
DSPA No. 85 of 2004

Lalit Mohan Vishwakarma,
S/o Sri Hari Ram Vishwakarma,
R/o Village Kumaurh,
P.O. & District Pithoragarh,
At present posted as Sub-Inspector,
P.S. Doiwala, District Dehradun. …… Appellant

Versus

1. State of U.P. through secretary,
   Ministry of Home, U.P., Lucknow.
2. The Inspector General of Police,
   Bareilly Zone, Bareilly.
3. The Deputy Inspector General of Police,
   Kumaon Division / Zone Kumaon, Nainital.
4. The Superintendent of Police,
   Champawat.
5. State of Uttaranchal,
   Through Secretary, Department of Home,
   Govt. of Uttaranchal, Dehradun.
6. The Director General of Police,
   State of Uttaranchal, District Dehradun …….. Respondents

Mr. Shobhit Saharia, Advocate i/b Mr. R.D. Khare, learned counsel for the appellant.
Mr. J.P. Joshi, learned Standing Counsel for the State of Uttaranchal.

Hon. V. S. Sirpurkar, C.J.
Hon. Rajesh Tandon, J.

1. Heard Mr. Shobhit Saharia, Advocate holding brief of Mr. R.D. Khare, learned counsel on behalf of the appellant and Mr. J.P. Joshi, learned Standing Counsel for the State of Uttaranchal.

2. The interim relief application is rejected because in this interim relief application, entirely new cause of action has been pleaded. Originally, in the writ petition, the controversy was only regarding the correctness of the order of punishment passed by the authorities, which order of punishment was throughout upheld by the Department and also by the learned Single Judge. The appeal is against that order

3. Now, perhaps the fresh interviews are being taken and the appellant is not invited for those interviews. The learned counsel for the appellant says that though he has suffered, already, the punishment for five years, he is not being called for interviews and in that view, direction should be passed by us directing that he should be called for interviews and be considered for further promotion. That is not possible in this. The cause of action is entirely different. The appellant may take up such remedies as are available to him in law.

4. With this observation, the interim relief application is rejected.

(Rajesh Tandon, J.) **(V.S. Sirpurkar, C.J.)**
07.12.2004 **07.12.2004**

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In the High Court of Uttaranchal, at Nainital.

D.S.P.A. No. 85/2004

Lalit Mohan Vishwakarma S/o Sri Hari Ram
Vishwakarma, R/o Village Kumaurh,
P.O. & District Pithoragarh,
At present posted as Sub Inspector,
Police Station Doiwala, District Dehradun. …… Appellant.

Versus

1. State of Uttar Pradesh
   through the Secretary Ministry of Home
   U.P., Lucknow.
2. The Inspector General of Police,
   Bareilly Zone, Bareilly.
3. The Deputy Inspector General of Police,
   Kumaon Division/Zone Kumaon, Nainital.
4. The Superintendent of Police, Champawat.
5. State of Uttaranchal through
   Secretary Department of Home,
   Government of Uttaranchal, Dehradun.
6. The Director General of Police,
   State of Uttaranchal District Dehradun .. Respondents.

Sri Rakesh Thapliyal, learned counsel for the appellant.
Sri K.P. Upadhyaya, learned S.C. for respondents 3 to 6.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17-04-2006

By way of this special appeal, the judgment and order dated 18-9-2004, passed by the learned Single Judge of this court in writ petition No. 1682(S/S) of 2001 Lalit Mohan Vishwakarma versus State of U.P. and others, has been challenged.

2- Brief facts of the case are that the appellant is Sub-Inspector in the service of the Civil Police of the State and has put in about 22 years of service in the Police Department. The petitioner was posted as Station Officer, Banbasa, District Champawat in the year 1999. During the posting of the appellant in that Police Station, a Tata Sumo Vehicle passed through that area with smuggled goods and when this vehicle was intercepted by the Checking Squad of the Police, it revealed that the persons sitting inside the vehicle were guests for the appellant. The appellant in order to hush up the incident, contacted two Press Reporters asking them not to publish the news

items relating to this incident. A show cause notice was issued to the appellant on 4-8-1999 by Superintendent of Police asking him to give his reply regarding the incident. The appellant submitted his reply. The preliminary enquiry was conducted against the appellant and thereafter his integrity was withheld vide order dated 16-8-1999 by the Superintendent of Police. The appellant filed an appeal/representation before the Deputy Inspector General of Police but his appeal/representation was also rejected vide order dated 31.1.2000. Thereafter the appellant preferred a revision before the Inspector General of Police, but it was also rejected vide order dated 5-8-2000. The appellant thereafter preferred the writ petition before this Court with the prayer to issue a writ in the nature of certiorari quashing the orders dated 16-8-1999, 31-1-2000 and 5-8-2000 respectively. The further relief was also sought from this court to issue a writ in the nature of mandamus commanding the respondents to expunge the entry of withholding the integrity from the character roll of the appellant during the year 1999.

3- The counter affidavit was field with the plea that the Tata Sumo vehicle, which was coming from Mahendra Nagar Nepal to Banbasa, was intercepted by the Police at the border and on checking it was detected that the vehicle was carrying some smuggled goods. The persons sitting in the vehicle were handed over to Custom Department Officers. It has also been pleaded that the Station Officer Lalit Mohan Vishwakarma (appellant) made efforts to save the constable Sundar Lal Sharma who was also sitting in the vehicle at the time of checking. The matter was inquired by the Deputy Superintendent of Police and it was found that the act of Lalit Mohan Vishwakarma amounts to misconduct and deviation of duty. The appellant was awarded an adverse annual remark for the year 1999 on account of suppressing the case against the accused persons.

4- Learned Single Judge, after hearing the counsel for the parties and perusal of the record dismissed the writ petition, vide judgment and order dated 18-9-2004.

5- Feeling aggrieved by the aforesaid impugned judgment and order passed by the learned Single Judge, this special appeal has been preferred.

6- We have heard learned counsel for the parties and perused the record.

7- The record reveals that the appellant was admittedly posted as Station Officer at Police Station Banbasa, District Champawat in the year 1999. It is also admitted fact that the Tata Sumo vehicle was intercepted by Police Sub Inspector Afsar Abbas Zeddi with his team and it was found that the vehicle was carrying smuggled goods. The record also reveals that one Constable Sunder Lal Sharma was also sitting in that vehicle and this Constable Sundar Lal Sharma was posted at that time in Police Station, Banbasa. When the vehicle was intercepted by the Raiding Team, then this fact was disclosed by the Constable Sundar Lal Sharma to the Raiding Party that the other persons sitting in the vehicle were guests of the Station Officer of Banbasa.

8- The Inquiry Officer, who is the Deputy Superintendent of Police, has got no grudge or enmity with the appellant. The Superintendent of Police after examining the inquiry report passed an order for withholding the integrity of the appellant, which was confirmed at further two stages, i.e., in the appeal as well as in the revision. Therefore, it is clear that the matter pertaining to withholding integrity has been examined at three stages of the department and there is no element of malafide in the order passed against the appellant.

9- Learned Single Judge has rightly dismissed the writ petition and we do not find any ground to interfere in the impugned judgment and order dated 18-9-2004 passed by the learned Single Judge.

10- The special appeal is accordingly dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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